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(considering such investment as an investment security) would not be, an investment company as defined in section 3 of the Act.

(Sec. 6, 74 Stat. 412; 15 U.S.C. 80a-6)

[33 FR 11451, Aug. 13, 1968]

§ 270.3c-3 Definition of certain terms used in section 3(c)(1) of the Act with respect to certain debt securities offered by small business investment companies.

The term *public offering* as used in section 3(c)(1) of the Act shall not be deemed to include the offer and sale by a small business investment company, licensed under the Small Business Investment Act of 1958, of any debt security issued by it which is (a) not convertible into, exchangeable for, or accompanied by any equity security, and (b) guaranteed as to timely payment of principal and interest by the Small Business Administration and backed by the full faith and credit of the United States. The holders of any securities offered and sold as described in this section shall be counted, in the aggregate, as one person for purposes of section 3(c)(1) of the Act.

[37 FR 7590, Apr. 18, 1972]

§ 270.3c-4 Definition of "common trust fund" as used in section 3(c)(3) of the Act.

The term *common trust fund* as used in section 3(c)(3) of the Act (15 U.S.C. 80a-3(c)(3)) shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided, That:*

(a) The common trust fund is operated in compliance with the same State and Federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

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(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 80a-6(c), 80a-37(a))

[43 FR 2393, Jan 17, 1978]

§ 270.3c-5 Beneficial ownership by knowledgeable employees and certain other persons.

(a) As used in this section:

(1) The term *Affiliated Management Person* means an affiliated person, as such term is defined in section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)], that manages the investment activities of a Covered Company. For purposes of this definition, the term "investment company" as used in section 2(a)(3) of the Act includes a Covered Company.

(2) The term *Covered Company* means a Section 3(c)(1) Company or a Section 3(c)(7) Company.

(3) The term *Executive Officer* means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for a Covered Company or for an Affiliated Management Person of the Covered Company.

(4) The term *Knowledgeable Employee* with respect to any Covered Company means any natural person who is:

(i) An Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company; or

(ii) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company,

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other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, *provided that* such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(5) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a-3(c)(1)].

(6) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)].

(b) For purposes of determining the number of beneficial owners of a Section 3(c)(1) Company, and whether the outstanding securities of a Section 3(c)(7) Company are owned exclusively by qualified purchasers, there shall be excluded securities beneficially owned by:

(1) A person who at the time such securities were acquired was a Knowledgeable Employee of such Company;

(2) A company owned exclusively by Knowledgeable Employees;

(3) Any person who acquires securities originally acquired by a Knowledgeable Employee in accordance with this section, provided that such securities were acquired by such person in accordance with § 270.3c-6

[62 FR 17529, Apr. 9, 1997]

§ 270.3c-6 Certain transfers of interests in section 3(c)(1) and section 3(c)(7) funds.

(a) As used in this section:

(1) The term *Donee* means a person who acquires a security of a Covered Company (or a security or other interest in a company referred to in paragraph (b)(3) of this section) as a gift or bequest or pursuant to an agreement relating to a legal separation or divorce.

(2) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclu-

sion provided by section 3(c)(1) of the Act [15 U.S.C. 80a-3(c)(1)].

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)].

(4) The term *Transferee* means a Section 3(c)(1) Transferee or a Qualified Purchaser Transferee, in each case as defined in paragraph (b) of this section.

(5) The term *Transferor* means a Section 3(c)(1) Transferor or a Qualified Purchaser Transferor, in each case as defined in paragraph (b) of this section.

(b) Beneficial ownership by any person ("Section 3(c)(1) Transferee") who acquires securities or interests in securities of a Section 3(c)(1) Company from a person other than the Section 3(c)(1) Company shall be deemed to be beneficial ownership by the person from whom such transfer was made ("Section 3(c)(1) Transferor"), and securities of a Section 3(c)(7) Company that are owned by persons who received the securities from a qualified purchaser other than the Section 3(c)(7) Company ("Qualified Purchaser Transferor") or a person deemed to be a qualified purchaser by this section shall be deemed to be acquired by a qualified purchaser ("Qualified Purchaser Transferee"), provided that the Transferee is:

(1) The estate of the Transferor;

(2) A Donee; or

(3) A company established by the Transferor exclusively for the benefit of (or owned exclusively by) the Transferor and the persons specified in paragraphs (b)(1) and (b)(2) of this section.

[62 FR 17529, Apr. 9, 1997]

§ 270.5b-1 Definition of "total assets."

The term *total assets*, when used in computing values for the purposes of sections 5 and 12 of the Act, shall mean the gross assets of the company with respect to which the computation is made, taken as of the end of the fiscal quarter of the company last preceding the date of computation. This section shall not apply to any company which has adopted either of the alternative methods of valuation permitted by § 270.2a-1.

[Rule N-5B-1, 6 FR 5920, Nov. 22, 1941]